

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>DONALD J. WIMP</b>	)	
Claimant	)	
	)	
VS.	)	
	)	
<b>AMERICAN HIGHWAY TECHNOLOGY</b>	)	
Respondent	)	Docket Nos. 1,042,286 &
	)	1,053,208
	)	
AND	)	
	)	
<b>TRAVELERS PROPERTY CASUALTY</b>	)	
<b>OF AMERICA</b>	)	
Insurance Carrier	)	

**ORDER**

**STATEMENT OF THE CASE**

Respondent and its insurance carrier (respondent) requested review of the February 10, 2014, Award entered by Administrative Law Judge (ALJ) Thomas Klein. The Board heard oral argument on July 15, 2014. William Phalen of Pittsburg, Kansas, appeared for claimant. Dallas Rakestraw of Wichita, Kansas, appeared for respondent.

The ALJ found claimant permanently and totally disabled and awarded benefits on that basis in Docket No. 1,042,286. Additionally, the ALJ awarded future medical upon proper application. Regarding Docket No. 1,053,208, the ALJ found claimant failed to establish a right to compensation and denied the same.

The Board has considered the record and adopted the stipulations listed in the Award.

**ISSUES**

Respondent argues claimant is not permanently and totally disabled, as the greater weight of the evidence proves claimant remains capable of engaging in substantial and gainful employment. Respondent maintains claimant sustained a 20 percent permanent partial functional impairment to the right upper extremity at the level of the forearm and a

10 percent permanent partial functional impairment to the left upper extremity at the level of the forearm in Docket No. 1,042,286. Respondent agrees with the ALJ's finding claimant failed to establish he sustained a workplace injury in Docket No. 1,053,208.

Claimant contends he is permanently and totally disabled, and the ALJ's Award should be affirmed. Alternatively, if it is found claimant is not permanently and totally disabled, claimant requests this claim be remanded to the ALJ for findings on impairment and work disability in both Docket Nos. 1,042,286 and 1,053,208.

The sole issue for the Board's review is: What is the nature and extent of claimant's disability?

#### **FINDINGS OF FACT**

Claimant worked for respondent for approximately 18 years as a production worker. In this position, claimant ran a wire draw, which is a machine that strips wire. Claimant testified this required constant forceful gripping and grasping with both hands on the high tensile wire fed into the machine. Claimant alleged he developed problems in his neck and bilateral upper extremities as a result of this work. The parties stipulated claimant met with personal injury by accident each and every working day beginning May 6, 2008, the day claimant first began authorized medical treatment.

Claimant initially developed problems with his hands in May 2008, with pain, numbness, and tingling. Claimant was initially seen by Dr. Brett Donahey before he was referred to Dr. Maxime Coles. Dr. Coles performed right carpal tunnel release surgery on June 27, 2008, and left carpal tunnel release surgery on July 30, 2008. Claimant returned to work at respondent in his previous position in October 2008.

Dr. Edward Prostic, a board certified orthopedic surgeon, first examined claimant at his counsel's request on October 24, 2008. Claimant complained of pain in the right shoulder and soreness in the wrists, the right wrist more than the left, weakness of grip, more on the right than the left, and persistent numbness of the right thumb and long fingers. Dr. Prostic reviewed claimant's medical records, history, and performed a physical examination. Dr. Prostic noted no abnormalities of claimant's cervical spine. He diagnosed claimant as "post-operative bilateral carpal tunnel decompression and [he] had evidence of dysfunction of his right shoulder, most likely from rotator cuff disease."<sup>1</sup> Dr. Prostic recommended claimant continue with strengthening and stretching exercises for the right shoulder and anti-inflammatory medication as needed.

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<sup>1</sup> Prostic Depo. at 11.

Claimant stated he continued to have pain in his hands while working for respondent and he attempted to perform his job duties using different positions. Claimant testified he then developed neck and shoulder pain. Respondent accepts voluntary layoffs in the winter, and claimant took a voluntary layoff in November 2008. Claimant stated he had too much pain in his neck, right shoulder, and hands to perform his job.

Claimant returned to work in March 2009, this time in a setup position. Claimant explained he thought the new position would be easier, but instead he had additional difficulties. Claimant reported these difficulties and was directed to Dr. Tom Phillips. Dr. Phillips eventually performed a repeat right carpal tunnel release on June 2, 2009. Claimant returned to work following the surgery but testified the conditions in his hands, neck, and right shoulder worsened.

Claimant returned to Dr. Prostic at his counsel's request on October 16, 2009. Claimant presented with continued pain in the back of his neck aggravated by driving or looking up/down, intermittent soreness of the right shoulder, and significant weakness of grip in the right hand with some persistent numbness of the thumb and long fingers. Dr. Prostic obtained an updated history, medical records, and performed a physical examination. Although claimant's cervical spine examination revealed no abnormalities, Dr. Prostic determined claimant was status post repeat carpal tunnel surgery on the right, status post carpal tunnel surgery on the left, and claimant continued to have evidence of cervical sprain/strain and right rotator cuff dysfunction. Dr. Prostic recommended claimant continue with strengthening exercises for the right shoulder and anti-inflammatory medication.

Dr. Prostic opined claimant's "difficulties were caused or contributed to by the work performed at [respondent] through May 6<sup>th</sup>, 2008, and his return to work thereafter."<sup>2</sup> Using the *AMA Guides*,<sup>3</sup> Dr. Prostic opined claimant sustained an 8 percent permanent partial impairment of the body as a whole related to the cervical spine, a 25 percent impairment of the right upper extremity, and a 10 percent impairment of the left upper extremity, for a combined impairment of 27 percent to the body as a whole on a functional basis.

Later in 2009, claimant again took a voluntary layoff from respondent. Claimant stated he could not do his job due to constant pain in his neck, right shoulder, and bilateral hands. Claimant's last day worked at respondent was November 9, 2009.

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<sup>2</sup> Prostic Depo. at 16.

<sup>3</sup> American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

Dr. Phillips referred claimant to a pain doctor to provide ongoing pain medication following the 2009 treatment. Dr. Stanley Haag, claimant's family physician, was authorized to provide the medication. Claimant has taken hydrocodone and Flexeril since 2009. Claimant underwent additional testing of his upper extremities at Dr. Haag's suggestion and was referred to Dr. Phillips for follow-up. Claimant was provided with an off-work slip on February 15, 2010.

Dr. Phillips again examined claimant on May 21, 2010. Dr. Phillips referred claimant to Dr. Brian Divelbiss for a second opinion regarding claimant's upper extremity condition on June 3, 2010. Following nerve conduction testing, Dr. Divelbiss determined additional surgical intervention for claimant's recurrent carpal tunnel syndrome was unlikely to be beneficial.

Claimant returned to Dr. Prostic at his counsel's request on May 16, 2011. Claimant presented with numbness in the thumb and long fingers of the right hand, soreness about the left wrist, neck pain with stiffness and ache, and intermittent aching around the right shoulder and right elbow. Dr. Prostic reviewed updated medical records, an updated history, and performed another physical examination. Dr. Prostic testified his diagnoses and impairment opinions remained unchanged since his examination of October 16, 2009. Dr. Prostic imposed permanent restrictions of no work requiring repetitious right-handed gripping, no use of vibrating tools with the right hand, no over-the-shoulder activities with the right hand, and no lifting weights greater than 50 pounds occasionally or 20 pounds frequently.

Dr. Paul Stein, a neurological surgeon, examined claimant at respondent's request for purposes of a medical evaluation on September 14, 2011. Claimant complained of pain in the right hand extending up the right arm affecting the right elbow and shoulder, pain in the right side of his neck, intermittent numbness and tingling in the right and left hands, and stated his left wrist felt as if it had a band around it. After reviewing claimant's medical history, medical records, and performing a physical examination, Dr. Stein noted claimant developed bilateral carpal tunnel syndrome as a result of his repetitive work activity at respondent. Regarding claimant's right shoulder, Dr. Stein wrote, "I cannot determine the presence of functional impairment to the right shoulder."<sup>4</sup> Dr. Stein indicated if there was an injury to claimant's right shoulder, it preexisted the 2008 work-related injury. Dr. Stein found no indication of a specific injury to claimant's cervical spine. Additionally, Dr. Stein determined claimant had a very mild lateral epicondylitis in the right elbow as a result of the work injury, but testified it did not warrant an impairment rating. Dr. Stein recommended the following permanent restrictions related to claimant's bilateral hands and right elbow: no repetitive activity with either hand, no or very minimal use of vibrating or impacting power tools, and no activity requiring firm and sustained right hand grip.

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<sup>4</sup> Stein Depo., Ex. 2 at 7.

Using the *AMA Guides*, Dr. Stein opined claimant sustained a 20 percent impairment to the right upper extremity at the level of the wrist and a 5 percent impairment to the left upper extremity at the level of the wrist. Dr. Stein rated both claimant's right elbow and cervical spine at 0 percent impairment, and he could not determine any functional impairment to claimant's right shoulder.

Dr. Peter Bieri, a court-ordered independent medical examiner, examined claimant on April 23, 2012. Dr. Bieri also reviewed claimant's medical records, history, and performed a physical examination, determining claimant sustained bilateral extremity entrapment neuropathy caused or permanently aggravated by the work injury in May 2008 at respondent. Dr. Bieri assigned restrictions of limited repetitive activity to upper extremities to no more than occasionally with no use of vibrating or power tools. Dr. Bieri also adopted Dr. Prostic's restrictions from right shoulder level and overhead use for lifting greater than 50 pounds occasionally or 20 pounds frequently.

Dr. Prostic assigned restrictions of no repetitious gripping right-handed, no use of vibrating tools right-handed, no over-the-shoulder activities with his right hand, and no lifting weights greater than 50 pounds occasionally or 20 pounds frequently.

Dr. Bieri, utilizing the *AMA Guides*, opined claimant sustained a 20 percent impairment to the right upper extremity and a 10 percent impairment to the left upper extremity directly attributable to the 2008 work-related injury. Regarding claimant's cervical spine and right shoulder, Dr. Bieri wrote:

While [claimant] has subjective complaints, in the absence of significant objective findings and documentation, I cannot, within reasonable medical probability, attribute any true permanent impairment of the right shoulder and neck to work activity.<sup>5</sup>

Mary Sylvester, a school psychologist, evaluated claimant's IQ with a series of tests at claimant's counsel's request. Claimant's test results determined he falls within the 18<sup>th</sup> percentile of intellectual functioning, or low average. Ms. Sylvester testified claimant's academic knowledge and skills, including basic reading, comprehension, and math skills, fall within the low average range.

Steve Benjamin, a vocational rehabilitation consultant, interviewed claimant at respondent's request on September 28, 2011, via telephone. Mr. Benjamin reviewed claimant's 15-year work history prior to 2008 and generated a list of 12 unduplicated job tasks claimant performed in that period. Mr. Benjamin opined claimant had the ability to return to the open labor market in an entry-level position. Mr. Benjamin produced an

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<sup>5</sup> Bieri Depo., Ex. 2 at 6.

addendum report dated January 2, 2013, subsequent to receiving additional information, which included Ms. Sylvester's report. Mr. Benjamin stated his opinions regarding claimant's ability to re-enter the labor market remained unchanged.

Dr. Bieri reviewed the task list generated by Mr. Benjamin. Of the 12 unduplicated job tasks on the list, Dr. Bieri opined claimant could perform 6, for a 50 percent task loss.

Karen Terrill, a rehabilitation consultant and vocational expert, initially interviewed claimant via telephone on April 13, 2010, at claimant's counsel's request. Ms. Terrill obtained claimant's past relevant work history and produced a list of seven unduplicated job tasks claimant performed during that period.<sup>6</sup> Ms. Terrill generated a follow-up report on August 28, 2012, after obtaining additional information and conducting another telephone interview with claimant. This updated report contains 12 unduplicated job tasks, though Task No. 10 is noted as performed by claimant following his accident. Ms. Terrill opined claimant is unable to return to substantial, gainful employment.

Dr. Bieri reviewed the April 20, 2010, report generated by Ms. Terrill. Dr. Bieri opined claimant could not perform 4 of the 7 unduplicated tasks on the list, for a task loss of 57 percent.

Dr. Prostic reviewed the August 28, 2012, report generated by Ms. Terrill. Of the 12 unduplicated tasks on the list, Dr. Prostic opined claimant could not perform 7, for a 58 percent task loss. Dr. Prostic noted if Task No. 10 was excluded from the list, claimant could not perform 6 of 11 unduplicated tasks for a 55 percent task loss.

#### **PRINCIPLES OF LAW**

K.S.A. 44-510c(a)(2) states, in part:

(2) Permanent total disability exists when the employee, on account of the injury, has been rendered completely and permanently incapable of engaging in any type of substantial and gainful employment. Loss of both eyes, both hands, both arms, both feet, or both legs, or any combination thereof, in the absence of proof to the contrary, shall constitute a permanent total disability.

An injured worker is permanently and totally disabled when he is "essentially and realistically unemployable."<sup>7</sup>

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<sup>6</sup> Ms. Terrill's April 2010 report contains 7 unduplicated tasks, though Task No. 7 is one claimant performed subsequent to his accident. (Terrill Depo., Ex. 2 at 4).

<sup>7</sup> *Wardlow v. ANR Freight Systems*, 19 Kan. App. 2d 110, 113, 872 P.2d 299 (1993).

The “existence, extent and duration of an injured workman’s incapacity is a question of fact for the trial court to determine.”<sup>8</sup> It is the function of the trier of fact to decide which testimony is more accurate and/or credible and to adjust the medical testimony with the testimony of the claimant and others in making a determination on the issue of disability.

The trial court must make the ultimate decision as to the nature and extent of injury and is not bound by the medical evidence presented.<sup>9</sup>

### ANALYSIS

#### **Docket No. 1,053,208**

The Board agrees with the ALJ’s findings with regard to Docket No. 1,053,208, and adopts his findings of fact and conclusions. Claimant failed to prove he suffered a permanent injury related to his alleged series of injuries through November 9, 2009.

#### **Docket No. 1,042,286**

Claimant alleges permanent impairment to the cervical spine related to his work-related injury. At his discovery deposition on September 9, 2009, claimant testified that his current physical problems were his right shoulder, neck and wrists.<sup>10</sup>

Dr. Prostic examined claimant on four occasions from 2008 to 2011 at the request of claimant’s attorney. The October 24, 2008, examination report, written five months after claimant claimed a work-related injury and six weeks after claimant testified he wanted treatment for his neck, contained no indication that claimant made complaints of cervical-related symptoms. In reference to the cervical spine, Dr. Prostic wrote, “No abnormality is noted, including thoracic outlet testing.”<sup>11</sup>

The first note of cervical involvement in the medical evidence is found in Dr. Prostic’s October 16, 2009, examination report, where he wrote, “The patient continues to have pain in the back of his neck aggravated by driving or by looking upward or downward.”<sup>12</sup> Dr. Prostic noted normal alignment of the cervical spine and no neurological

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<sup>8</sup> *Boyd v. Yellow Freight Systems, Inc.*, 214 Kan. 797, 803, 522 P.2d 395 (1974).

<sup>9</sup> See *Tovar v. IBP, Inc.*, 15 Kan. App. 2d 782, 785, 817 P.2d 212, *rev. denied* 249 Kan. 778 (1991).

<sup>10</sup> Claimant’s Depo. (Sept. 9, 2009) at 12.

<sup>11</sup> Prostic Depo., Ex. 2 at 2.

<sup>12</sup> Prostic Depo., Ex. 3 at 1.

deficit. Dr. Prostic assigned an 8 percent whole body impairment for cervical sprain and strain related to claimant's work-related injury.

There is no notation of neck complaints when claimant saw Dr. Prostic five months after his alleged series of injuries. Dr. Prostic's cervical examination at that time was normal. Dr. Prostic based his impairment rating on the Range of Motion Model of the AMA *Guides*. However, no range of motion deficit was noted until at least seventeen months after claimant's alleged series of injuries.

Dr. Stein examined claimant on one occasion, at respondent's request, on September 14, 2011. Claimant complained of pain extending from his right hand to the right side of his neck. Dr. Stein noted a history of neck pain in 2004. Dr. Stein found no specific injury to the cervical spine and assessed a 0 percent impairment to the cervical spine as a result of claimant's work-related injuries. Dr. Stein assigned no permanent restriction for the alleged cervical injury.

Dr. Bieri, the court-ordered examining physician, also noted a history of neck pain dating back to 2004. In the cervical examination paragraph of his report, Dr. Bieri noted full range of motion and no visible or palpable muscle spasm. Dr. Bieri did note slight tenderness to diffuse palpation on the right, with no specific localization. Dr. Bieri found no significant objective structural findings involving the cervicothoracic spine. Dr. Bieri could not attribute any permanent impairment of claimant's neck related to work activities.

The Board finds the weight of the evidence does not support finding claimant suffered a cervical injury related to his work activities. Claimant's physical injuries related to his work for respondent are limited to scheduled injuries to his upper extremities for bilateral entrapment neuropathy, as diagnosed by Dr. Bieri.

K.S.A. 44-510c(a)(2) establishes a rebuttable presumption in favor of permanent total disability when the claimant experiences a loss of both eyes, both hands, both arms, both feet, or both legs or any combination thereof. If the presumption is not rebutted, the claimant's compensation must be calculated as a permanent total disability in accordance with K.S.A. 44-510c.<sup>13</sup>

The ALJ held respondent failed to rebut the presumption of permanent total disability. The Board concurs. The ALJ included claimant's preexisting learning disability in the analysis of permanent total disability. Based upon testing performed by Ms. Sylvester, claimant's level of functioning is equal to the average nine to twelve year old in

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<sup>13</sup> *Casco v. Armour Swift-Eckrich*, 283 Kan. 508, 528, 154 P.3d 494 (2007); citing *Pruter v. Larned State Hospital*, 271 Kan. 865, 875-76, 26 P.3d 666 (2001).



the categories of reading, math and academic level. In finding claimant to be permanently and totally disabled, the ALJ wrote:

The claimant's presumptive permanent total disability is the factor that makes the claimant's academic abilities and achievements, problems with learning, physical restrictions and the affects of his ongoing medication relevant.<sup>14</sup>

Respondent argues the ALJ's logic is contrary to *Nelson v. Capital City Moving and Storage*,<sup>15</sup> in which the Court of Appeals reversed a Board finding that the claimant was permanently and totally disabled. In *Nelson*, the Board found the "claimant to be permanently and totally disabled due to the combination of his work-related injuries and his preexisting mental condition."<sup>16</sup>

The claimant's preexisting mental condition in *Nelson* is similar to the claimant in this case. In describing the claimant's preexisting mental condition in *Nelson*, the Court of Appeals wrote:

The evidence introduced at the regular hearing indicated that Nelson was functioning at a low intellectual level. In particular, Nelson testified that he graduated from high school in special education classes. He further testified that his reading and writing skills were limited. The parties stipulated to a report by Dr. Melvin Berg which stated that Nelson was in the borderline range of intellectual ability and that his abilities were extremely limited.<sup>17</sup>

The Court of Appeals, in *Nelson*, wrote "a mental condition is compensable under the Workers Compensation Act only if it has a causal connection to the claimant's work-related physical injuries."<sup>18</sup>

On the other hand, the Court of Appeals, in *Wardlow v. ANR Freight Systems*, adopted a trial court finding that permanent and total disability was:

[B]ased on a totality of the circumstances including [Wardlow's] serious and permanent injuries, the findings of Drs. Prostic and Redford, the extremely limited

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<sup>14</sup> ALJ Award (Feb. 10, 2014) at 4-5.

<sup>15</sup> *Nelson v. Capital City Moving and Storage*, 32 Kan. App. 2d 566, 85 P.3d 728 (2004).

<sup>16</sup> *Nelson v. Capital City Moving and Storage*, No. 264,542, 2003 WL 21087640 (Kan. WCAB Apr. 4, 2003).

<sup>17</sup> *Nelson*, *supra*, at 568.

<sup>18</sup> *Nelson*, *supra*, at 573.

physical chores [Wardlow] can perform, his age, his lack of training, driving and transportation problems, past history of physical labor jobs, being in constant pain, and constantly having to change body positions.<sup>19</sup>

The Court of Appeals in *Wardlow* also found the trial court's finding that the claimant was permanently and totally disabled because he was essentially and realistically unemployable to be compatible with legislative intent.<sup>20</sup>

In *Lyons v. IBP, Inc.*, decided nine months after *Nelson*, the Court of Appeals wrote:

The Board correctly noted that "*Wardlow* still provides precedential guidance regarding what factors should be considered in the factual determination of what constitutes permanent and total disability." Its ruling that "essentially and realistically unemployable" is compatible with legislative intent, comports with the totality of circumstances approach to factually determining permanent total disability.<sup>21</sup>

In *Loyd v. ACME Foundry, Inc.*, the Court of Appeals wrote:

In Kansas, the existence, extent, and duration of an injured worker's disability is a question of fact to be determined from the totality of the circumstances. In *Wardlow*, the claimant was found to be permanently and totally disabled based on his serious and permanent injuries, his limitations on physical activity, his age, his lack of training, his driving and transportation problems, his history of physical labor jobs, his constant pain, and his constant switching of body positions. Although the court in *Wardlow* did not examine the claimant's intelligence or education, it did factor in analogous characteristics such as his history of employment in manual labor jobs and lack of training. In Loyd's case, therefore, her lack of education and low intelligence can be considered as part of the totality of the circumstances in determining whether she is now permanently and totally disabled. [Citations omitted.]<sup>22</sup>

More recently, in *Blankley v. Russell Stover Candies, Inc.*, the Court of Appeals wrote:

Whether a worker is capable of engaging in substantial and gainful employment is a factual determination, made by examining the totality of the evidence, which

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<sup>19</sup> *Wardlow v. ANR Freight Systems*, 19 Kan. App. 2d 110, 114, 872 P.2d 299 (1993).

<sup>20</sup> *Wardlow*, *supra*, at 113.

<sup>21</sup> *Lyons v. IBP, Inc.*, 33 Kan. App. 2d 369, 378, 102 P.3d 1169 (2004).

<sup>22</sup> *Loyd v. ACME Foundry, Inc.*, No. 100,695 (Kansas Court of Appeals unpublished opinion filed Oct. 16, 2009).

includes, but is not limited to, the claimant's physical activity, age, intelligence, education, lack of training, job history, and constant pain. See *Lyons v. IBP, Inc.*, 33 Kan.App.2d 369, 370-78, 102 P.3d 1169 (2004)(affirming Board finding of permanent total disability on "totality of the circumstances approach" even though no medical doctor rated claimant 100% disabled); *Wardlow v. ANR Freight Systems*, 19 Kan.App.2d 110, 113-15, 872 P.2d 299 (1993).<sup>23</sup>

*Nelson* is inconsistent with the many cases that apply the *Wardlow* standard for determining permanent total disability. In determining if claimant is permanently and totally disabled as a result of his injuries, the Board will consider the totality of the circumstances, which includes, but is not limited to, the claimant's physical activity, age, intelligence, education, lack of training, job history, and constant pain.

The parties agree claimant has bilateral upper extremity injuries arising out of his employment with respondent, which triggers the presumption of permanent total disability. As rebuttal to the presumption of permanent total disability, respondent provided the testimony of Mr. Benjamin in support of the argument claimant is employable. Considering claimant's physical restrictions of Dr. Stein, Mr. Benjamin opined claimant could reenter the open labor market and earn entry level wages.

Mr. Benjamin did not believe claimant could continue to perform four tasks associated with his employment with respondent, including three primary tasks of which claimant spent most of his time. Mr. Benjamin did not identify any jobs available in claimant's local area that claimant could perform. He did identify some jobs, in his opinion, claimant could perform based upon Dictionary of Occupational Titles definitions. Mr. Benjamin based his opinion regarding the availability of jobs in southeast Kansas on his review of the Kansas Wage Survey.

Karen Terrill testified she was familiar with the southeast Kansas labor market. Ms. Terrill provided placement services and expert witness services in southeast Kansas. She stated she had provided testimony for the Social Security judges regarding southeast Kansas. Ms. Terrill testified that, due to claimant's limited ability to read and write, claimant would not be a good candidate for retraining. Ms. Terrill also acknowledged claimant's ability to concentrate due to medications affected his ability to find work. Ms. Terrill stated it was her opinion claimant was unable to return to the open labor market and was unable to obtain substantial and gainful employment.

The Board places the greater weight on the testimony of Karen Terrill. Claimant is realistically and essentially unemployable due to his work restrictions and his limited ability to be retrained.

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<sup>23</sup> *Blankley v. Russell Stover Candies, Inc.*, No. 110,014 (Kansas Court of Appeals unpublished opinion filed May 30, 2014).

**CONCLUSION**

Respondent failed to rebut the presumption of permanent total disability created by K.S.A. 44-510c(a)(2). Claimant is permanently and totally disabled as a result of injuries sustained as the result of his employment with respondent.

**AWARD**

**WHEREFORE**, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Thomas Klein dated February 10, 2014, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of August 2014.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

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Thomas Klein, Administrative Law Judge